

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members and Counsel
Cc: Gary C. Wood, Esq.
From: Jonathan Wayne, Executive Director
Date: January 15, 2007
Re: Background Information for Waiver Request by Lobbyist Gary C. Wood

Procedures for Late-Filing Penalties

The Ethics Commission receives reports from lobbyists, political candidates for state and county office, political action committees (PACs), and party committees in accordance with regularly scheduled deadlines. If a report is not filed on time, an automatic penalty process is set in motion:

- The Commission staff notifies the filer that the report appears to be late and how a preliminary penalty will be calculated based on statute.
- The filer is given an opportunity to pay the penalty or request a waiver.
- If the filer requests a waiver, the request is scheduled for consideration by the Commission. The staff does not grant waivers in order to promote transparency and avoid any suggestion of favoritism.

While some filers find this procedure to be unnecessarily strict, it is clearly set forth in the Election Law for late campaign finance reports filed by candidates, PACs, and party committees (21-A M.R.S.A. §§ 1020-A(2) and 1062(2)). The Commission has used the same procedures for late disclosure reports filed by lobbyists.

Mitigating Circumstances for Late Campaign Finance Reports

The Commission is authorized by law to waive a penalty in full or in part "due to mitigating circumstances." In the case of candidates, PACs, and party committees, mitigating circumstances are defined as:

- a valid emergency determined by the Commission ... to warrant the waiver of the penalty ...;
- an error by the Commission staff;
- failure to receive notice of the filing deadline; or
- other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexpected delays in postal service. (Id.)

The Election Law also allows the Commission to waive late-filing penalties if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate or committee's treasurer, or the harm suffered by the public from the late disclosure. (Id.)

Mitigating Circumstances for Late Disclosure Reports by Lobbyists

The penalty statute in the Lobbyist Disclosure Law (3 M.R.S.A. § 319(1), attached) authorizes the Commission to waive a penalty due to mitigating circumstances, but does not define what circumstances should be considered mitigating. In my experience, the Commission members have tended to apply the same considerations for lobbyists as they do for candidates, PACs, and party committees.

Recent Practice

When I began my position in mid-2003, the Commission members routinely granted a 50% reduction for late-filing penalties for any first-time late filer who requested a waiver. That approach seemed to impress upon filers the need to report on time, while demonstrating flexibility by the Commission. In the next two years, the Commission gradually adopted a stricter approach, and discontinued the 50% reduction. I believe some newer Commission members felt that assessing the full penalty set forth in statute would encourage timely filing and would help avoid possible inconsistencies.

Based on memory (without conducting research of Commission meetings in the last few years), the Commission most often has granted waivers to late filers in situations involving unforeseen medical situations of a candidate, lobbyist, or committee treasurer, the occasional error by Commission staff, or (since electronic filing became mandatory) some event that interfered with a filer's access to a computer. Following the approach preferred by the Commission members, the staff has gradually become stricter about recommending penalty waivers.

Staff Recommendation re: Request by Gary C. Wood

Gary C. Wood is the Corporation Counsel for the City of Portland, and was registered in 2007 as a lobbyist. He was one day late filing the monthly lobbyist report due October 15, 2007. The preliminary amount of the penalty set by statute is \$100. Mr. Wood requests a waiver of the penalty because there was confusion between his office and the office of the city manager regarding whether he or Assistant City Manager Patricia Finnigan would file the report. Mr. Wood or Ms. Finnigan is expected to attend the January 25 meeting in support of the waiver request.

The staff recommended no waiver of the penalty at the December 7 meeting in order to be consistent with recent Commission actions on penalty matters. We do not have any objection if the Commission wishes to reduce the penalty in Mr. Wood's case. Also, in light of the changed membership of the Commission, the staff is ready to apply a more lenient approach generally to routine penalty matters if you are so inclined. Thank you for your consideration.

Title 3, §319, Penalty

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§319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The commission may waive the penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances.

[1993, c. 691, §22 (rpr).]

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[1993, c. 446, Pt. B, §12 (amd).]

2.

[1979, c. 632, §3 (rp).]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[1993, c. 446, Pt. B, §13 (amd).]

PL 1975, Ch. 576, § (NEW).

PL 1975, Ch. 621, §2 (RP).

PL 1975, Ch. 724, § (REN).

PL 1977, Ch. 696, §17 (AMD).

PL 1979, Ch. 632, §3 (RPR).

PL 1989, Ch. 114, § (AMD).

PL 1991, Ch. 465, §2 (AMD).

PL 1993, Ch. 446, §A15, B11-13 (AMD).

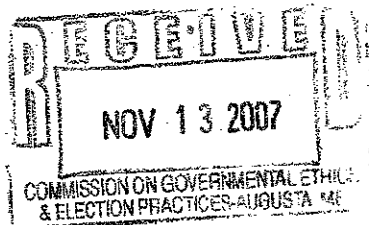
PL 1993, Ch. 691, §22 (AMD).



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

Corporation Counsel
Gary C. Wood



November 9, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adolf
Mary E. Costigan

Gavin O'Brien
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333-0135

**RE: Letter Dated October 23, 2007 Concerning Late Filing of September Lobbyist
Monthly Disclosure Report**

Dear Mr. O'Brien:

I am respectfully requesting that the Commission make a final penalty determination in relation to the late filing of the City's September lobbyist monthly disclosure report and not impose the \$100 fine noted in your letter dated October 23, 2007 (attached).

The reason that the City was late with this one report is that the position of City Lobbyist was in transition between myself and my office (Corporation Counsel) and Assistant City Manager Patricia Finnigan who works in the City Manager's office. There was confusion between our offices as to who was responsible for filing the September report which is why it was filed late.

In behalf of the City I would also note that we have never been late with any prior filings and always done our best to report any lobbying effort as required by law.

As a municipality we try to make sure that all of our taxpayer's dollars are spent in the interest of the taxpayers and we hope that you will forgive this one late filing and the \$100 penalty.

Thank you for your consideration.

Sincerely,


Gary C. Wood

Corporation Counsel and former Lobbyist
for the City of Portland

cc: Pat Finnigan, Assistant City Manager and Lobbyist for City of Portland



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Gary Wood, Lobbyist for:
City of Portland

From: Gavin O'Brien

Date: October 23, 2007

OCT 23 2007

Each registered lobbyist is required to file monthly reports with the Commission on Governmental Ethics and Election Practices no later than 15 calendar days following the month that is the subject of the report. Reports are due by 5:00 p.m. Any person who fails to file a timely report may be assessed a penalty of \$100 for every month the report is late. You filed your September Lobbyist Monthly Disclosure report on 10/16/07. The penalty is \$100.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request the Commission to make a final penalty determination. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-4179.

cc: City of Portland

Cut Along Dotted Line

To: Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Maine 04333

From: Gary Wood, Lobbyist for:
City of Portland

Re: Penalty for late filing of the September Lobbyist Disclosure Report (\$100)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please make Check or Money Order Payable to Treasurer, State of Maine

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



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Multiple Reports for Mr. Gary Wood

Monthly Report - Long Form

Report Description	Report Status	Report Date		
December -- 2006	Filed	1-2-2007	Delete	Print
January -- 2007	Filed	2-13-2007	Delete	Print
February -- 2007	Filed	3-9-2007	Delete	Print
March -- 2007	Filed	4-17-2007	Delete	Print
April -- 2007	Filed	5-11-2007	Delete	Print
May -- 2007	Filed	6-15-2007	Delete	Print
June -- 2007	Filed	7-12-2007	Delete	Print
July -- 2007	Filed	8-3-2007	Delete	Print
August -- 2007	Filed	9-4-2007	Delete	Print
September -- 2007	Filed	10-16-2007	Delete	Print

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Instructions to:

Create new monthly report - click the Add button

****See Help Menu for Instructions****